

AMERICAN REFRIGERATOR TRANSIT CO.

210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103
TEL. AREA CODE 314 622-2718

ROBERT J. DUNNE, JR.
PRESIDENT AND GENERAL MANAGER

November 12, 1980

File: S-395
cc: E-712

RECORDATION NO. 7732 Filed 1426

Mr. Mark M. Hennelly
Vice-President
Doniphan, Kensett & Searcy Railway
210 North 13th Street
St. Louis, Missouri 63103

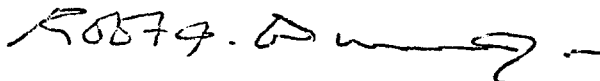
DEC 22 1980 -2 35 PM
INTERSTATE COMMERCE COMMISSION

Dear Mr. Hennelly:

Re: Railroad Equipment Lease Between
American Refrigerator Transit Company and
the Doniphan, Kensett & Searcy Railway.

This is to advise that, pursuant to Section 11 of the Railroad Equipment Lease entered into between ART and the Texas-New Mexico Railway Company, dated November 1, 1974, which was subsequently assumed by the Doniphan, Kensett & Searcy Railway on October 26, 1978, bearing ICC Recordation Number 7732-C, American Refrigerator Transit Company is hereby terminating said lease, effective thirty (30) days following your receipt of this notice.

Very truly yours,

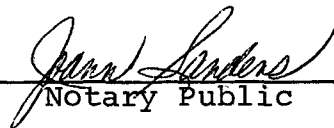


R. J. Dunne, Jr.

RJD/bjg

State of Missouri)
) ss.
City of St. Louis)

On this 9th day of December, 1980, before me personally appeared R. J. Dunne, Jr., to me personally known, who, being by me duly sworn, says he has compared the attached copies of the Notice of Lease Termination, and that same are complete copies of the original in all respects, including the dates and signatures.



Notary Public

My commission expires: 9/10/82

JOANN SANDERS
NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES SEPT. 10, 1982
CITY OF ST. LOUIS

RECORDED

7732

DEC 3 1974

RAILROAD EQUIPMENT LEASE

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT dated as of this 9th day of October 1974, by and between E. I. DUPONT DE NEMOURS & COMPANY, INC., a Delaware corporation hereinafter called "Lessor", and AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, the Lessor is the tenant of certain railroad cars under a lease agreement dated as of October 1, 1974 ("Prime Lease") in which United States Railway Leasing Company is landlord, and Lessor wishes to sublease to Lessee, and Lessee wishes to sublease from Lessor, certain railroad cars:

NOW THEREFORE, in consideration of the rentals reserved herein and of the mutual covenants and agreements contained in this lease, it is hereby agreed:

1. LEASE: TERM.

(a) Lease. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, upon the terms and conditions herein set forth, the railroad cars described in the Schedule hereto, hereinafter collectively referred to as "Cars" and individually referred to as the "car", and to pay Lessor during the term of this Lease the rent set forth in Paragraph 7 of this Lease.

(b) Term. The term of the Lease, as to each car, shall commence on the date of delivery to Lessee specified in Lessee's Certificate of Inspection and Acceptance for each such car as provided in paragraph 3 of this Lease and shall continue in effect as to all Cars under this Lease until the fifth anniversary of the delivery date of the tenth car, but in no event shall the term of this Lease as to any car, or all of the Cars, be longer than the term of the Prime Lease, unless sooner terminated in accordance with this Lease or unless extended pursuant to written agreement between the parties.

2. Delivery. Lessor shall deliver the Cars as soon as is reasonably possible after the execution of this Lease, freight prepaid to the Lessee, or to the party designated by Lessee, at the point of manufacture. Lessor's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Lessor shall not be responsible for, failure to deliver or delays in delivering the Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Lessor's control; provided, however that in no event shall Lessee be obligated to accept delivery of cars after March 30, 1975. Lessee agrees to pay the monthly rental, or pro rata portion thereof, as provided

in paragraph 7 hereof, on each of the cars from the date each such car has been delivered to Lessee until each such car is returned to Lessor upon termination of this Lease.

3. Condition of Cars; Acceptance; Disclaimer of Warranties;

(a) Condition of Cars. All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic, but Lessee shall be solely responsible for determining that the Cars are in proper condition for loading and shipment. Within three days after Lessor shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the manufacturer's plant and accept or reject them as to condition. Cars so inspected and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and any differences or discrepancies from specified condition, construction, type, equipment, or otherwise, are thereby waived by Lessee without further act on its part. Lessee shall issue and deliver to Lessor, with respect to all Cars accepted as or deemed hereunder to meet the requirements of this Lease, a Certificate of Inspection and Acceptance.

(b) Disclaimer of Warranty. Except as set forth in this Lease, Lessor, not being the manufacturer or seller of the Cars, nor the manufacturer's or seller's agent, makes to Lessee no warranty or representation, express or implied, of merchantability or otherwise, including, but not limited to: the fitness, design or condition of the Cars; the quality or capacity of the Cars; the workmanship of the Cars; that the Cars will satisfy the requirements of any law, rule, specification or contract pertaining thereto; any guaranty or warranty against patent infringement or latent defects; and any other representation or warranty whatsoever, express or implied. Lessor agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of the Cars or any parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights.

4. Use and Possession. During the term of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each car from the date the Lease becomes effective as to each car and may use the Cars upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic but at all times subject to the terms and conditions of this Lease; provided, however, that at all times the Cars shall be used only in the United States of America or in Canada.

5. Transportation Costs and Duties. Lessor shall be liable for and shall pay or reimburse Lessee for any transportation costs, including but not limited to switching charges, freight rates and demurrage or storage charges.

6. Taxes. Lessor shall be liable for and shall pay and reimburse any payment of: (a) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars or this Lease; and (b) all taxes, duties or imports assessed or levied on the Cars or this Lease by a foreign country or a governmental subdivision thereof. Lessee shall be liable for and shall pay and reimburse for payment of: (a) all Federal, State or other governmental property taxes assessed or levied against the Cars during the term of this Lease; and (b) all taxes or charges assessed or levied against its interest as Lessee of the Cars.

7. Rent.

(a) Maximum Rent. Schedule A attached hereto, or such additional schedules as may be issued from time to time as set forth in paragraph 7(c) of this Lease, sets forth as maximum rent a figure reflecting the maximum per car per month amount ever to be received by Lessor under this Lease. The maximum rent reflects a figure well below the anticipated actual costs to be incurred by Lessor in connection with the furnishing of the Cars. Initially, and notwithstanding that Lessor's actual costs are notably higher, the maximum rent shall be the amount for which a like car could currently be leased from a car leasing company on a 15-year basis. After the first year, should changed circumstances warrant, the maximum rent figure may be renegotiated as provided in subparagraph (c). Actual monthly payments by Lessee shall be made three (3) months in arrears at a per car rate of \$60 less than the maximum rent figure set forth in the schedule and the tariff.

(b) Accounting and Adjustments. If, at any time, Lessee's earnings (amounts actually received by Lessee) as a result of any authorized sublease of the Cars, shall be less than an amount computed by multiplying Maximum Rent by the number of car-months accumulated, Lessor will pay to Lessee the difference as billed. Semiannually during the term of the Lease there will be an accounting between the parties. If, for any such period, the earnings of the Lessee from any authorized sublease of the Cars, shall exceed the Maximum Rent multiplied by the accumulated car-months, the Lessee shall make a further payment to the Lessor, provided that such payment shall not exceed the smaller of the excess earnings as defined above or the amount which, when added to the payments already made under paragraph (a) hereof, shall equal the Maximum Rent, it being expressly understood that Lessor shall never receive more than the Maximum Rent which, as indicated, shall never exceed its actual costs. As part of each accounting, Lessor shall furnish Lessee with a document, certified by Lessor's principal accounting officer, showing its actual costs incurred in connection with the Cars during the covered period and the amounts received from Lessee under this Lease for the same period. For periods in which Lessee compensates Lessor on an average per car per month basis less than Maximum Rent, Lessee shall furnish Lessor with a document, certified by an officer of Lessee, setting forth the earnings of the Cars. The intent of this Lease is to assure that the amounts received by Lessor shall never exceed its costs but should such ever occur Lessor shall immediately refund the difference to Lessee.

(c) Renegotiation. Although maximum rent is herein arrived at on a basis designed to assure that it is below Lessor's actual minimum costs, it is recognized that significant changes in Lessor's costs may call for a renegotiation of this figure from time to time. Accordingly, at the end of any calendar year, the maximum rent may be renegotiated following thirty (30) days' written notice by either party to the other. Such renegotiated figure may include, in addition to the initially published maximum rent figure (purposely set at an amount less than Lessor's actual per month cost of providing the Car) a mutually agreed-upon factor to offset in whole or in part the maintenance expenses incurred by Lessor. In arriving at such renegotiated figure, the parties shall give consideration to Lessor's experience in the prior year but when agreed upon the renegotiated figure shall have prospective application only. The renegotiated figure may reflect either an increase or a decrease in the previous Maximum Rent, depending upon all pertinent factors including Lessor's prior experience. When agreed upon, the renegotiated figure shall be published by means of an appropriate tariff and the amendment to this Lease shall be recorded as such with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Commission Act.

8. Maintenance and Repairs.

(a) Maintenance. Lessee, during the term of this Lease, promptly and with due diligence, shall keep and maintain the Cars and the interior lading equipment, special interior linings or removable parts, and provide such repair work or other work or materials as is necessary to maintain the same, in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes or additions to the Cars or their equipment and appliances to the extent necessary or required from time to time: (a) by the Interchange Rules; and (b) by applicable laws and regulations of any state or governmental body, including specifically but not exclusively, the Interstate Commerce Commission. Lessor agrees to pay Lessee the amounts and at the rates specified in the Interchange Rules for the maintenance and repair of the Cars on the same basis as though Lessor were the "owner", as such term is used in the Interchange Rules. Maintenance may also be performed on a contract basis if more advantageous to Lessor, as mutually agreed upon. Lessee shall bill Lessor for all such amounts, specifying the number of the car repaired and the amount. Lessee shall provide underlying detail of repairs as requested. Lessee shall deal with railroads for the account of Lessor in all matters relating to the maintenance, repair or destruction of the Cars, and credit Lessor with all amounts collected.

(b) Loss, Theft or Destruction of Cars. In the event any car is lost, stolen, destroyed or, in the judgment of Lessee, damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise Lessor of such occurrence. Lessee shall pay to Lessor the AAR depreciated value settlement made by Lessee with the railroad responsible for its destruction and from which Lessee has collected the settlement, and rental obligations as set forth in paragraph 7 of this Lease shall cease as of the date of destruction. It is understood that Lessee shall be required to make such payment to Lessor only after Lessee has collected settlement from the responsible railroad, and Lessee agrees to use its best efforts to collect such settlement.

(c) Abatement: Replacement. In the event a car becomes unfit for service and requires repairs, such car, after a period of five (5) days from the date when such car is made empty, will not be subject to the terms set forth in paragraph 7 of this Lease until the date such car is repaired and released for service. Lessor may, at any time and from time to time, replace any car which has been lost, stolen, destroyed or damaged beyond economic repair, with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Cars which have been lost, stolen, destroyed or damaged, or to include any Replacement Cars within the terms and provisions of this Lease.

9. Liens. Lessee shall keep the Cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's interest in the Cars, or which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and shall promptly discharge any such lien, encumbrance or legal process.

10. Indemnity. Lessee agrees to indemnify Lessor and same it harmless from any charge, loss, claim, suit, expense or liability which Lessor may suffer or incur by reason of its ownership interest and which arises in connection with the use or operation of a car or the Cars during the term of this Lease, and without regard to how such charge, loss, claim, suit, expense or liability arises, except when caused by Lessor's negligence. The foregoing indemnity shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

11. Marking. At, or prior to, the time of delivery of each of the cars, Lessor shall cause both sides of each car to be distinctly, permanently and conspicuously marked by stenciling or by a metal plate affixed thereto, with such reporting marks and numbers as shall by that time have been provided to it by Lessee and with such other not-inconsistent marks as may be necessary to identify the underlying owner and Lessor during the term of this Lease. Lessee shall promptly replace any such marking which may be removed, destroyed or rendered illegible in whole or in part. Except for numbering and stenciling as provided herein, Lessee shall keep the Cars free from any marking or labeling which might be interpreted as a claim of ownership by Lessee or any Sublessee or other party receiving any rights as Sublessee or otherwise through Lessee and will not change, or permit to be changed, the identifying road numbers on any of the Cars; provided, however, that Lessee may permit the Cars to be lettered or marked in an appropriate manner for convenience of identification of the interest of Lessee or any Sublessee or to indicate the nature of the service furnished thereby. At the

termination of this Lease, Lessee's marks shall be removed at Lessor's cost.

12. Per Diem. Lessor agrees that Lessee or any Sublessee may collect and retain any and all per car hire charges applicable to the Cars, it being expressly understood that, in the event of a sublease to a railroad, no per car hire charges shall accrue while any car is on the lines of such railroad.

13. Inspection; Inventory. During the term of this Lease, Lessor, or a party designated by Lessor, shall have the right, at Lessor's own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. Lessee shall, upon request of Lessor, but no more than once every year, furnish to Lessor two (2) copies of an accurate inventory of all Cars subject to this Lease.

14. Return of Cars. Upon the expiration or termination of this Lease, Lessee agrees to return the Cars, at the expense of Lessor, to the original point of delivery or to any other point designated by Lessor. The Cars shall be so returned free of all liens and charges, except as otherwise herein provided, and in the same or as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, and with all the same type and character of devices, appliances or appurtenances with which the Cars were equipped at time of delivery to Lessee. However, the preceding sentence shall not be binding upon Lessee for any car which has been destroyed or damaged beyond economic repair, as previously provided herein, or which has been modified by agreement of the parties, during the term of this Lease.

15. Default. Any one of the following shall constitute an event of default: (a) Lessee shall fail to make any payment of rent when the same shall become due and such failure shall continue unremedied for a period of thirty (30) days; or (b) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by Lessor; or (c) Lessee shall admit in writing its inability to pay its debts or shall have made a general assignment for the benefit of creditors; or shall have been adjudicated bankrupt; or shall have filed a voluntary petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors; or shall have filed an answer to a creditor's petition or other petition filed against it (admitting the material allegations thereof) for an adjudication in bankruptcy or for a reorganization; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of its property or assets; or such receiver, trustee or custodian shall have been appointed for any of its property or assets (otherwise than upon application or consent of Lessee) and such receiver, trustee or custodian so appointed shall not have been discharged within sixty days after the date of his appointment; or if an order shall be entered, and shall not be dismissed or stayed within sixty (60) days from its entry, approving any petition

for a reorganization of Lessee; or (d) An attachment or execution is levied upon Lessee's property in or interest under this Lease which is not satisfied or released or stayed within thirty (30) days thereafter; or (e) Lessee shall cease to do business as a going concern and its pertinent obligations are not assumed by its parent or affiliated company.

16. Remedies. Upon the happening of an event of default, Lessor, at its option, may: (a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this Lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessee's enforcement of its remedies hereunder; or (b) declare this Lease terminated and recover from Lessee all amounts then due and payable plus all damages sustained by Lessor by reason of the breach of any covenant of the Lease other than the covenant to pay rent; or (c) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free of any right of Lessee to use the Cars for any purposes whatsoever. No remedy referred to in this paragraph is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any event of default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent event of default.

17. Termination. In addition to the termination rights set forth in other paragraphs of this Lease, Lessor may terminate this Lease at any time by delivery of thirty (30) days prior written notice to Lessee. If in the judgment of Lessee, in good faith and reasonably exercised, it should become necessary to amend or terminate this Lease in order to comply with any legal requirement, including specifically any rule, regulation or order of a court or regulatory agency, Lessee shall give written notice thereof to Lessor. If, in Lessee's judgment, amendment of this Lease would accomplish compliance with such legal requirement, rule, regulation or order of a court or regulatory agency, Lessee's notice shall specify the necessary amendment and Lessor shall have the option to accept such amendment or terminate this Lease and shall notify Lessee of such choice within thirty (30) days after Lessor's receipt of Lessee's notice. If Lessor elects to terminate this Lease, or if Lessee's initial notice specifies termination as the only method of compliance with such legal requirement, rule, regulation or order of a court or regulatory agency, such termination shall be effective thirty (30) days after the receipt of the applicable notice.

18. Assignment and Sublease; Binding Effect. This Lease and all rights of Lessor hereunder shall be assignable by Lessor without Lessee's prior consent but Lessee shall not be obligated to any assignee of Lessor except after written notice of such assignment from Lessor. Without prior written consent of Lessor, Lessee shall not assign this Lease or its interest hereunder or enter into any sublease with respect

to all or any part of the Cars except that Lessee may sublease the Cars to the Texas-New Mexico Railway Company or any successor or affiliated company. This Lease should be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Notices. All notices required or permitted to be delivered to any party shall be in writing, and shall be deemed to be given, unless either party hereto has notified the other in writing of a change, when personally delivered to an officer of the other party or when deposited in the United States mails, certified or registered and postage prepaid as follows: (a) If to Lessor: Wilmington, Delaware, 19898; (b) If to Lessee: 210 North 13th Street, St. Louis, Missouri, 63103.

20. Severability. If any provision hereof be invalid under any applicable law, such provision shall be inapplicable and deemed omitted but the remaining provisions hereof shall be given effect in accordance with the intent hereof.

21. Waiver; Amendment. No waiver by either party of any provision hereof shall constitute a waiver of any other matter. The Lease may only be amended by a writing signed by both Lessor and Lessee.

22. Counterparts and Headings. This Lease may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The paragraph headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease.

23. Recording. Lessee, without expense to Lessor, will cause this Lease and all amendments, or supplements, thereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

E. I. DUPONT DE NEMOURS
& COMPANY, INC.,

By *J. H. Martin*
~~Asst~~ President
Director Transportation &
Distribution Dept.

ATTEST:

H. P. ...
Assistant Secretary

AMERICAN REFRIGERATOR TRANSIT
COMPANY,

By *Robert A. ...*
President and General Manager.

ATTEST:

H. J. ...
Assistant Secretary

STATE OF DELAWARE)
COUNTY OF New Castle : ss

On this 31 day of October 1974,
before me personally appeared J. H. Norton to me
personally known, who being by me duly sworn says that he is
Trans. & Distr. Dept.
Asst. Director, President of the E. I. DuPont De Nemours &
Company, Inc., and L. R. Wonderly to me personally known
to be the Assistant Secretary of said corporation, that the
seal affixed to the foregoing instrument is the corporate seal
of said corporation, that said instrument was signed and sealed
on behalf of said corporation by authority of its Board of
Directors, and they acknowledged that the execution of the
foregoing instrument was the free act and deed of said corporation.


Notary Public

My Commission expires:

My commission expires June 4, 1976



STATE OF MISSOURI)
 : SS
CITY OF ST. LOUIS)

On this *31st* day of *October* 1974,
before me personally appeared Robert J. Dunne, Jr., to me
personally known, who being by me duly sworn says that he
is President and General Manager of American Refrigerator
Transit Company, and W. J. Herold to me personally
known to be the Assistant Secretary of said corporation,
that the seal affixed to the foregoing instrument is the
corporate seal of said corporation, that said instrument
was signed and sealed on behalf of said corporation by
authority of its Board of Directors, and they acknowledged
that the execution of the foregoing instrument was the free
act and deed of said corporation.

Loretta L. Edwards
Notary Public.

Commissioned within and for the County of St. Louis,
Missouri, which adjoins the City of St. Louis, Missouri,
where this act was performed.

My Commission expires:
January 28, 1978



E. I. DUPONT DE NEMOURS & COMPANY, INC., LESSOR

AMERICAN REFRIGERATOR TRANSIT COMPANY, LESSEE

SCHEDULE A

<u>CARS.</u>	<u>DESCRIPTION.</u>	<u>LESSEE'S MARKS.</u>	<u>MONTHLY RENT PER CAR</u>
20	52' 5" I.L., 70 TON, RBL CARS	TNM 787000- TNM 787019, INC.	MAXIMUM RENT \$340